

Transportation Permit Efficiency and Accountability Committee (TPEAC)

Local Government Task Force Final Report

Association of Washington Cities
Washington Department of Ecology
Washington Department of Fish and Wildlife
Washington State Association of Counties
Washington State Department of Transportation

December 31, 2004

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Purpose of the LOCAL GOVERNMENT TASK FORCE

Under RCW 47.06C.040, TPEAC legislation required the appointment of a Local Government Task Force. The Local Government Task Force (LGTF) was appointed in May 2003.

Representatives from the Washington State departments of Transportation, Ecology, Fish and Wildlife, and Washington State Association of Counties and Association of Washington Cities participated. The purpose of the LGTF is to:

- Identify one or more county and city permits for activities for which uniform standards can be developed for application by local governments;
- Identify strategies for local governments to adapt standards and best practices to include in local permits; and
- Provide a progress report on December 31, 2003, and a final report on December 31, 2004.

The context for seeking uniform standards for cities and counties is to meet two objectives:

1. State benefit – enable WSDOT to expedite projects (apply similar standards from jurisdiction to jurisdiction vs. unique standards from jurisdiction); and
2. Improve local government processes – provide tools for local jurisdictions.

This update is to provide a final report on the LGTF. The report outlines the completed work and response results from interviews with WSDOT and local governments, recommendations resulting from Task Force review of local government permitting activities, and the status of work still in progress to implement those recommendations.

I. Case Studies and Interview Results

A case study approach was used to review joint WSDOT and local government projects that have been delayed during the past biennium. At the end of the 2001-2003 biennium, WSDOT recorded eighty-nine construction projects with deferrals. Only eleven of the eighty-nine projects were attributed to a city or county. Based on the case study, the LGTF met with representative staff from all six WSDOT regions, Washington State Ferries environmental office, WSDOT Maintenance, WSDOT Bridge, and WSDOT Hydraulics. Using a survey tour as a platform for discussion, the meetings focused on:

- What's working well with local jurisdictions?
- What challenges do you have with local jurisdictions (in obtaining permits)?; and
- Of the identified challenges, what potential solutions would you like to see?

As part of the balance of the discussion, local jurisdictions were compared to state and federal agencies as part of the overall project delivery. In addition, local governments were asked to identify potential uniform standards and identify process improvements with WSDOT.

Response – Feedback from WSDOT and local governments was extensive, and generally positive from both perspectives. Overall the found that relationships with local governments are good and that cities and counties were found to be a small part of the concern for construction delays. With this positive tone in mind, the following (abridged) findings, categorized under some general topic headings, were identified:

Findings:

- Staff turnover and understanding of transportation issues at the local level can be a problem (revisiting prior decisions, new staff tends to be more conservative in analysis, lack of experience dealing with larger transportation projects, etc.);
- Both WSDOT and a jurisdiction's own public work staff may not fully understand what is required in a permit;
- There is a continued desire for more locals to use the Joint Aquatic Resources Permit Application (JARPA);
- In larger jurisdictions, working with a city or county's public works department and planning office is key to project delivery;
- Pre-application process with WSDOT is supported and frequently used;
- Early involvement on WSDOT projects with locals usually occurs; the exceptions tend to be with cities/counties that operate their permits on an enterprise fund basis;
- Permit issuance was relatively fast, but WSDOT did not approach the jurisdiction until after the other permits had been obtained;
- The actual permit is issued relatively quickly, but negotiations leading to a permit can take months;
- Better clarification of emergency or imminent maintenance work is needed – e.g., preventative bank stabilization before flood events;
- Clarification is needed on WSDOT mitigation requirements as they relate to critical area ordinances;
- Watershed mitigation has potential but requires continued development;
- WSDOT review of local government planning processes (ordinance updates, etc.) are inconsistent;
- Better Internet access to local ordinances is needed.

Further clarification is provided for the following three issues that were highlighted by the LGTF:

1. Developer Services Manual

During the interview process, the LGTF received feedback from both local government and WSDOT staff referencing a manual that has proved to be a useful tool for permitting transportation projects. State agency and local government staff found the manual useful particularly in the case of staff turnover.

- The draft WSDOT Developer Services Manual should be institutionalized; and
- Local utilities notice requirements are being incorporated as part of NEPA hearing process to reduce one public outreach loop.

2. Development of Programmatic and Noise Permits

- Consistency in noise variances or exemptions is desirable;

- Programmatic permits have potential for high benefit since counties/cities have similar maintenance activities.

3. Shoreline Management Act

- Shoreline Management Act exemptions are being applied inconsistently by local jurisdictions throughout the state. Streamlining an exemption process for routine roadside and ferry service maintenance activities would be beneficial;
- Notification of WSDOT activities that are occurring within the jurisdiction, even if it is an exempt activity within WSDOT right of way, is desirable.

II. Recommendations from Review and Status of Work Still in Progress

The following summarizes the LGTF recommendations to address the major issues identified in the review and the status of work to implement these recommendations. Some of the recommendations will have been fully implemented by December 31, 2004; others are institutionalized as an ongoing measure; and others are still works in progress and will require work beyond December 31, 2004, to complete.

1. Training and Outreach

Recommendation

- Market to local agencies the adopted TPEAC streamline enhancements such as the recently approved programmatic agreements and integrated watershed management activities. Encourage the use of adopted TPEAC streamline permit enhancements throughout local agency permitting process.
- Provide an education component such as a “DOT Primer” program that will consistently provide updated information to staff at local governments to improve awareness and understanding of both WSDOT business practices and state, federal, and local government permitting requirements. An education program should also address the significance of WSDOT early involvement with local permitting agencies in order to maximize efficient permit delivery. WSDOT early involvement with cities and counties will provide a more complete picture regarding local requirements such as critical area ordinances and shoreline master plans that are occasionally missed and cause delays during the permit delivery stage of projects.
- Support broader use of JARPA.

Status

Many local governments have expressed an interest in the programmatic permits that were developed under TPEAC. Current examples of programmatic permits are channel maintenance and repair, fish passage barrier maintenance and repair, and culvert maintenance and repair. The Association of Washington Cities (AWC) and Washington State Association of Counties (WSAC) have responded to this interest in TPEAC products through outreach and marketing and will continue to make this a high priority. For example TPEAC material has been presented in workshops through the following associations and state agencies:

- American Public Works Association/ Washington Chapter
- Association of General Contractors
- Washington State Association of County and Regional Planning Directors
- Washington City Planning Directors Association
- City Engineers Association of Washington

- Washington Highway User Association
- Infrastructure Assistance Coordinating Council
- Municipal Research and Services Center of Washington
- County Road Administrative Board
- Transportation Improvement Board
- Public Works Board

These forums have provided the opportunity to market those permits to local governments. Fostering greater awareness of permit requirements and associated operational requirements, particularly specific to maintenance activities, is also key. Both AWC and WSAC will continue to communicate with their respective members by including updates of TPEAC activity their newsletters and web sites. WSDOT will work with AWC and WSAC to provide this information through forums identified above and to use these forums to discuss use of programmatic permits.

Another opportunity for improved project delivery on state projects is an education program /DOT "primer" course to help facilitate a faster "learning curve" for local government and state agency staff that are new or that have not been provided recent information on current WSDOT business practices when working with transportation project issues. WSDOT will consider including development of this course into its training program priorities in the 2005-07 biennium. Further development of an education program is needed to fully recognize the potential benefit to both state and local governments.

Extending the use of the JARPA permitting system to more cities and counties to unify the application process for aquatic permits is another opportunity for improved project delivery. Ecology reports that 24 counties and 59 cities use the JARPA form for their shoreline, floodplain, or critical area wetland permits (David Evans & Associates, "Common Permit Data Requirements: What are the Streamlining Opportunities?" – November 17, 2003.). Also, the LGTF supports work completed by TPEAC and Ecology to develop and promote an on-line JARPA application. Having the ability to use JARPA on-line may serve as an added incentive for greater use of JARPA by local governments not currently using the form. The outreach efforts identified above provide a good opportunity to discuss and encourage adoption of JARPA.

Although broader use of the JARPA is supported, there are practical reasons why not all jurisdictions use this process. A full, comprehensive survey of the reasons behind each jurisdiction's decision to not adopt JARPA was not completed by the LGTF. However, some of the jurisdictions interviewed did respond that the integration of JARPA was prohibited because their existing systems used to track permit information were not compatible with JARPA. Adoption of JARPA would require a complete overhaul of their existing systems and would be cost prohibited.

2. Developer Services Manual

Recommendation

- Finalize the draft WSDOT Development Services Manual to provide clear guidance to local governments regarding the requirements and procedures for reviewing developer *services applications*.

Status

The WSDOT Development Services Manual promotes a consistent statewide development review process and application of transportation and environmental mitigation guidelines for impacts to the state highway. The manual also provides guidance for public and private sector partners in their assessment of development impacts and mitigation to the state highway system.

WSDOT Developer Services staff statewide wrote the manual. The WSDOT Northwest Region Developer Services office is now updating three chapters of the manual based on comments compiled from the statewide Developer Services Committee. The Transportation and Economic Partnerships Office and the WSDOT headquarters Design Office are reviewing the revisions. Paula Hammond, Chief of Staff, reviews the manual for final approval. Once final approval is granted, the WSDOT Engineering Publications Office will formally issue the manual as an official WSDOT publication. The manual will be issued as an official publication by May 2005.

3. Programmatic Noise Permits

Recommendation

- Develop a nighttime noise programmatic permit.

Status

When developing a noise permit, each city takes into account the environment surrounding the roadway corridor, such as adjacent hospitals, residential development, and commercial centers. Consequently, highway corridor projects that extend across jurisdictions may encounter varying noise requirements from jurisdiction to jurisdiction. Work on developing a programmatic noise variance for nighttime maintenance work is underway. Coordination between WSDOT and the City of Renton Planning Department will result in five-year programmatic coverage for nighttime maintenance work along I-405 within the City of Renton. Noise variances typically have to be reissued on an annual basis. Development of a five-year programmatic permit will result in agreement of all conditions for a defined set of activities for a period of five years. This programmatic permit will result in a reduction in review time for both the City of Renton and WSDOT staff.

In January 2004, WSDOT will be prepared to provide the listing of all scheduled bridge maintenance work to City of Renton. The listing of proposed activities will serve as the basis for the permit application. The application process includes Renton's review of the application followed by a review before the Renton Public Works Board. A public hearing date will be set for March or April 2005. After the hearing, the city will issue a programmatic noise variance provided no major concerns are brought out during the review process. Upon completion of the April review period, the programmatic permit will immediately be utilized as seasonal maintenance work typically begins in May of each year.

4. Shoreline Management Act

LGTF Recommendation

- Develop a streamlined process for how routine, normal roadside maintenance activities will be handled in the shoreline permitting process.

Status

During the interview process, the LGTF heard some level of frustration from WSDOT maintenance and WSF regarding inconsistencies in how their routine maintenance work is

addressed in the Shoreline Management Act (SMA) permitting process. Maintenance activities that occur with-in shorelines may require review and approval through a permit process including a substantial development permit, a variance, or conditional use permit, all of which require public notice and a comment period. In some cases, maintenance work was considered to be an exempt activity and was required to proceed through the categorical exemption process, resulting in issuance of a letter of exemption. In other cases, the same activity would be considered substantial development, a variance, or a conditional use. Exemption processes vary between local agencies in terms of submittal requirements, review, and cost. Ecology has historically encouraged local governments to issue letters of exemption for all categorically exempt activities after reviewing proposals in a completed application. With a completed application, regulators have a written, graphical description of the proposal and can document the determination of what form the approval should take. Approval might include one or more of the four existing permit types – a categorical exemption, substantial development, variance, or a conditional use. Inconsistency in the shoreline permitting process leads to longer negotiation and review time, increased transaction costs, inconsistent permit conditions, and increased frustration for both the applicant and the permitting agency.

Addressing consistency issues in how routine roadside maintenance activities are dealt with under SMA has proven to be the most difficult task before the LGTF. Discussions are continuing between the department of Transportation and Ecology and local agencies concerning the right solution to this problem. The LGTF has identified several alternatives to improve consistency, and is working with each to determine the best fix. These alternatives (in order of work) are:

- Obtain an informal legal opinion regarding the interpretation of SEPA and SMA rules that may result in maintenance work becoming a nonpermitted activity. When the informal opinion from the Attorney General's Office is rendered, LGTF will meet with representatives from the Attorney General's Office to discuss the SEPA/SMA issue in winter 2005;
- Provided the determination is made that routine normal maintenance and repair activities should require review under SMA, the LGTF will recommend either:
 - (1) Developing statewide, regional, or local programmatic or general permits for maintenance to replace the categorical exemptions in the SMA;
 - (2) Clarifying that routine road maintenance activities should be considered categorically exempt by amending WAC 173-27-040, or
 - (3) Working with local governments to develop a template for local agencies to use when updating their Shoreline Master Programs to utilize a common approach for transportation related maintenance activities.

Options 1 and 2 will require legislation. All three options will ultimately require support by cities, counties, regulated community, and the environmental community if they are to apply to all road maintenance work statewide. The LGTF will determine the most appropriate alternative pending resolution of the SEPA/SMA requirements in January. In winter 2005, the LGTF will be prepared to recommend proceeding with one or more of the three alternatives outlined above.

PROGRESS TO DATE AND NEXT STEPS

| <u>DATE</u> | <u>MILESTONES</u> |
|------------------------|---|
| Summer 2003 | LGTF established |
| Ongoing | Participation in TPEAC sub-committees to ensure LGTF interests are met |
| Summer 2003 | Research accomplished on case studies |
| Fall 2003 | Survey tool developed |
| Fall 2003/winter 2004 | Outreach/interviews conducted to all WSDOT Regions |
| Winter 2004 to present | Outreach/interviews conducted to local governments |
| Winter 2004 | Outreach/interviews conducted to transportation organizations |
| Winter 2004 | Identification of key LGTF products and issues to be resolved |
| Winter 2004 to present | Shorelines Management Act research, analysis as it relates to programmatic and maintenance activities |
| | Final Report |
| Winter 2005 to 3/06 | Outreach to local governments on upcoming TPEAC streamlined enhancements |
| Winter 2005 to 3/06 | Participate on watershed based mitigation sub-committee, permit delivery sub-committee, full committee of TPEAC, and future sub-committees or work groups appointed by TPEAC as applicable. |
| Winter 2005 to 3/06 | Develop streamlined process for shoreline permits |
| Winter 2005 to 3/06 | Monitor current JARPA progress with King County and continue to work with the JARPA team |
| Winter 2005 to 3/06 | Monitor local government pilots testing watershed based mitigation concepts. |
| Winter 2005 to 3/06 | Monitor City of Renton progress with “noise programmatic permit” |
| Winter 2005 to 3/06 | Develop an education program for TPEAC streamlined permit enhancements for local and state agencies |
| Winter 2005 to 3/06 | Institutionalize Developer Services Manual |

REPORT SUMMARY AND NEXT STEPS:

Report Summary:

The LGTF has fulfilled most of its legislative mandate and is on course for meeting the remainder of the TPEAC legislative requirements. As noted in this report, several county and city permit activities have been selected to test uniform standards. In the case of programmatic noise permits, the City of Renton has developed a five-year uniform programmatic standard for noise permits with WSDOT. Many counties and cities are now beginning to use programmatic standards such as bridge washing and channel maintenance and repair and King County is working with the JARPA team to do an online permit application process. Whatcom and Walla Walla counties are in the beginning stages of a watershed based mitigation program. Ongoing efforts to encourage additional local governments to use streamline permit methods developed by TPEAC are underway by both Associations.

Next Steps:

Developing a streamlined process for how routine, normal roadside maintenance activities will be handled in the shoreline permitting process has proven to be a difficult task. As final steps for fulfilling TPEAC requirements by March 31, 2006, the LGTF will complete the following key products and issues:

1. Develop recommendations for a streamlined approach to shoreline management permits for maintenance activities.
2. Finalize the Developer Services Manual and make available to state and local agencies.
3. Develop an education program for state and local agencies to create awareness and understanding of state and local permitting requirements and tools. An education program should also address the significance of WSDOT early involvement in order to maximize efficient permit delivery. WSDOT early involvement with cities and counties will readily provide a more complete picture regarding local requirements such as critical area ordinances and shoreline master plans that occasionally is missed and causes delays during the permit delivery stage of the project.
4. Distribute information on programmatic tools such as noise permit models and fish passage barrier repair and maintenance models to local governments.